

## ARTICLE 43-03

### **LIGNITE RESEARCH, DEVELOPMENT, AND MARKETING PROGRAM** **RULES**

**Deleted:** CONTRACTS FOR LAND RECLAMATION RESEARCH AND

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Chapter

**43-03-01** General Provisions

**43-03-02** Eligibility

**43-03-03** Maximum Grant Amount and Matching Fund Requirement

**43-03-04** Application Requirements

**43-03-05** Review and Award Contracts and Contract Terms

**43-03-06** Public Information – Patent and New Technologies Policies

#### **CHAPTER 43-03-01** **GENERAL PROVISIONS**

Section

**43-03-01-01** History – Administration

**43-03-01-02** Definitions

**43-03-01-03** Costs of Application Preparation

**43-03-01-04** Acceptance and Rejection of Applications

**43-03-01-05** Reservation of Funds

**43-03-01-06** Statement of Intent [Repealed]

**43-03-01-01. History – Administration.** Since 1987 the North Dakota industrial commission has been authorized to make funds available to provide financial assistance for contracts for land reclamation research projects and for research, development, and marketing of lignite and products derived from lignite. The lignite research council, established by executive order, will review and make recommendations to the commission on all applications for financial assistance under this program.

**History:** Effective February 1, 1988; amended effective October 1, 1990; March 1, 1992.

**General Authority:** NDCC 57-61-01.5

**Law Implemented:** NDCC 54-17.5-01, 57-61-01.5

**Deleted:** 1987-4 and as presently constituted by executive order 1991-1,

**Deleted:** The industrial commission concurred in the appointments to the lignite research council.¶

**43-03-01-02. Definitions.** As used in this article:

1. “Applicant” means any person or entity applying to the commission for a grant from the lignite research fund.
2. “Application” means the written document that is submitted to the commission by an applicant seeking a grant from the fund.
3. “Commission” means the North Dakota industrial commission or its representative.
4. “Contract” means the signed agreement between the commission and grantee which describes the rights and duties of the commission and grantee with regard to the program.
5. “Council” means the lignite research council as established by executive order.
6. “Executive committee” means a committee of the council.
7. “Fund” means the lignite research fund available to the commission to provide funding for the program.
8. “Grant” means the monetary award made by the commission under the program.
9. “Grantee” means a successful applicant for a grant from the fund.

10. “Lignite vision 21 program” means projects under contract with the commission to conduct feasibility studies and construction of large-scale lignite energy conversion facilities which would result in new lignite production and new jobs.

11. “Program” means the program administered by the commission to provide financial assistance from the fund for land reclamation research projects and for research, development, and marketing of lignite and products derived from lignite.

12. “Technical advisor” means director of the lignite research, marketing and development program as appointed by the commission.

13. “Technical review committee” means a committee of independent peer reviewers selected by the commission to review the merits of applications.

**History:** Effective February 1, 1988; amended effective October 1, 1990; March 1, 1992.

**General Authority:** NDCC 57-61-01.5

**Law Implemented:** NDCC 54-17.5-04, 57-61-01.5

**43-03-01-03. Costs of application preparation.** The commission is not liable for any cost, including costs of preparation of applications, incurred by applicants prior to issuance of a contract. The commission will be liable only for those costs and expenses expressly identified by contract.

**History:** Effective February 1, 1988.

**General Authority:** NDCC 57-61-01.5

**Law Implemented:** NDCC 54-17.5-04, 57-61-01.5

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**43-03-01-04. Acceptance and rejection of applications.** The rules in this article do not commit the commission to award funds. The commission reserves the right to accept or reject any or all applications received as a result of the program and to negotiate with any and all qualified applicants. An application must have received a favorable recommendation from the council in order for the commission to award funds to the applicant.

**History:** Effective February 1, 1988; amended effective October 1, 1990; March 1, 1992.

**General Authority:** NDCC 57-61-01.5

**Law Implemented:** NDCC 54-17.5-04, 57-61-01.5

**43-03-01-05. Reservation of funds.** The commission is not obligated to award the total amount of funds made available under this program. Funds not awarded will be reserved for future grants under the program.

**History:** Effective February 1, 1988; amended effective March 1, 1992.

**General Authority:** NDCC 57-61-01.5

**Law Implemented:** NDCC 54-17.5-04, 57-61-01.5

**43-03-01-06. Statement of intent.** Repealed effective March 1, 1992.

## CHAPTER 43-03-02 ELIGIBILITY

Section

**43-03-02-01** Eligible Applicants

**43-03-02-02** Eligible and Ineligible Projects

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**43-03-02-01. Eligible applicants.** Any person, corporation, partnership, cooperative, or association, or consortium of such parties, may apply for funds under this program. With regard to site-specific feasibility studies, only owners of facilities, sponsors of projects or operators having effective control of a facility or project may apply. Applicants who do not own or control or have the clear and firm commitment of ownership or control are ineligible for feasibility study assistance. Any interested person in doubt as to eligibility should contact the commission.

**History:** Effective February 1, 1988; amended effective March 1, 1992.

**General Authority:** NDCC 57-61-01.5

**Law Implemented:** NDCC 54-17.5-04, 57-61-01.5

**43-03-02-02. Eligible and ineligible projects.** Any project proposing research, development, or marketing of lignite or products derived from lignite, or a land reclamation research project is eligible for a contract under this program. The following are examples of eligible topics:

1) Eligible lignite research projects include, but are not limited to:

- a. Conversions of lignite to other products and byproducts.
- b. Lignite cleaning or beneficiation.
- c. Lignite desulfurization and emission control.
- d. Lignite-water mixtures or lignite-methanol mixtures and other lignite-derived fuels.
- e. Lignite-based cogeneration projects.
- f. Development of markets for liquids or other byproducts derived from lignite.
- g. Research and development or products using ash derived from lignite.
- h. Studies of legal, regulatory, and economic factors affecting lignite use and development.
- i. Development of materials for use in lignite market promotion.
- j. Development of commercial programs to treat effluent, emissions, solid waste, or hazardous waste from lignite conversion plants, chemical spills and oil spills, using bioremediation technology.
- k. Resource characterization and evaluation studies.
- l. Development, demonstration, and refinement of gasification and liquefaction technologies using lignite.
- m. Development of advanced combustion systems, that is, systems with higher efficiency and lower emissions.
- n. In general, any project which will utilize or enhance the development or use of lignite resources.

2) Eligible land reclamation research projects include, but are not limited to:

- a. Prime farmland soil productivity research.
- b. Development of productivity indices for reclaimed land.
- c. Soil respreading, depth of soil replacement, and compaction studies.
- d. Research relating to root zone hydrology, runoff, and erosion on reclaimed land.
- e. Other projects that may reduce unnecessary regulatory costs and assist in effectively reclaiming mined land to its original or better productivity.

3) The following activities or uses are ineligible for funding under this program:

- a. Business startup capital.
- b. Business working capital.

c. Business advertising or promotional expenses pertaining to a specific company or cooperative.

**History:** Effective February 1, 1988; amended effective October 1, 1990; March 1, 1992.

**General Authority:** NDCC 57-61-01.5

**Law Implemented:** NDCC 54-17.5-01, 57-61-01.5

## CHAPTER 43-03-03

### MAXIMUM GRANT AMOUNT AND MATCHING FUND REQUIREMENT

Section

**43-03-03-01** Maximum Grant Amount

**43-03-03-02** Matching Funds

**43-03-03-01. Maximum grant amount.** Grants may be of any amount within the limits of legislation appropriation.

**History:** Effective February 1, 1988; amended effective March 1, 1992.

**General Authority:** NDCC 57-61-01.5

**Law Implemented:** NDCC 54-17.5-04, 57-61-01.5

**43-03-03-02. Matching funds.** A grant may not exceed fifty percent of the total project cost. Commission funding must be matched with industry and other sources (e.g., various federal government agencies) of cash, which may include in-kind services (contributed equipment, materials, or services). In-kind services may not exceed fifty percent of the total commission funding amount. Documentation demonstrating the matching funds, including letters of commitment from other funding sources, must be submitted to the commission within sixty days of the approval of an application by the commission, or within any additional time granted by the commission. The commission's approval is contingent upon receiving this documentation. If it is not received, the approval lapses and no grant may be made.

**History:** Effective February 1, 1988; amended effective October 1, 1990; March 1, 1992.

**General Authority:** NDCC 57-61-01.5

**Law Implemented:** NDCC 54-17.5-03, 54-17.5-04, 57-61-01.5

**Deleted:** Indirect costs (contributed equipment, materials, or services) may be used by any applicant to supply the required funding match or contribution.

## CHAPTER 43-03-04

### APPLICATION REQUIREMENTS

Section

**43-03-04-01** Application Format

**43-03-04-02** Application Deadline

**43-03-04-03** Application Fee

**43-03-04-04** Outstanding Tax Liability [Superseded]

**43-03-04-01. Application format.** An application must be direct, concise, and informative. It must be accompanied with the application fee set forth in section 43-03-04-03. It must be typed and double spaced on eight and one-half-inch by eleven-inch [21.59-centimeter by 27.94-centimeter] paper. Two copies of the application and an electronic version of the application are to be submitted to the following address:

North Dakota Industrial Commission  
State Capitol - 14th Floor

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600 East Boulevard Ave. - Dept 405  
Bismarck, ND 58505-0840  
ATTN: Lignite Research Program

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The Industrial Commission¶  
State Capitol¶  
Bismarck, North Dakota 58505¶

The application must contain the following:

1. Transmittal letter. A transmittal letter setting forth a binding commitment on behalf of the applicant to complete the project as described in the application if the commission makes the grant requested. The letter must be signed by someone authorized to contract on behalf of the applicant.

2. Title Page. A title page setting forth the project title, applicant, principal investigator, date of application, and amount of the request.

3. Table of contents.

4. Abstract. A one-page abstract of the project stating its objective, expected results, duration, total project cost, and participants. The abstract must include enough information to allow members of the technical review committee to determine if they are qualified to review the application.

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5. Project summary. An overview of the project that includes an explanation of its objectives.

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5. Project description. A detailed description of the project, including its objectives; its methodology; its anticipated results; the facilities, resources, and techniques to be used and their availability and capability; the environmental and economic impacts of the project while it is being conducted; its ultimate technological and economic impacts; and why the project is needed.

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6. Standards of success. The standards by which the success of the project is to be measured. This must include an explanation of what parts of the public and private sector will likely make use of the project's results, and when and in what way; of the potential that commercial use will be made of the project's results; how the project will enhance the use of North Dakota lignite and lignite products; how it will preserve existing jobs and create new ones; and how it will otherwise satisfy the priorities established in North Dakota Century Code section 54-17.5-03.

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7. Background and qualifications. A summary of prior work related to the project conducted by the applicant and other participants as well as by other organizations; a summary of the experience and qualifications pertinent to the project of the applicant, principal investigator, and other participants in the project.

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9. Qualifications. A

8. Management. A description of how the applicant will manage and oversee the project to ensure it is being carried out on schedule and in a manner that best ensures its objectives will be met, and a description of the evaluation points to be used during the course of the project.

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9. Timetable. A project schedule setting forth the starting and completion dates, dates for completing major project activities, and proposed dates upon which the interim reports required by section 43-03-05-8 will be submitted.

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10. Budget an itemized list of the project's capital costs; direct operating costs, including salaries; and indirect costs; and an explanation of which of these costs will be supported by the grant and in what amount. Identification of all other committed and prospective funding sources and the amount of funding from each source, differentiating between cash and in-kind services. An explanation why the funding requested is necessary to achieve the project's objectives and, if less funding is available than that requested, whether the project's objectives will be unattainable or delayed.

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11. Tax liability. An affidavit stating that the applicant does not have an outstanding tax liability owed to the State of North Dakota or any of its political subdivisions.

12. Confidential information. Any information in the application that is entitled to confidentiality and which the applicant wants to be kept confidential should, if possible, be placed in an appendix to allow for administrative ease in protecting the information from public disclosure while allowing public access to the rest of the application. Such information must be clearly labeled as confidential and the applicant must explain why the information is entitled to confidentiality as described in North Dakota Century Code section 54-17.5-06.

13. Appendices. Any necessary supporting documentation.

**History:** Effective February 1, 1988; amended effective March 1, 1992.

**General Authority:** NDCC 57-61-01.5

**Law Implemented:** NDCC 54-17.5-03, 54-17.5-04, 57-61-01.5

**Deleted:** 14. Matching funds. An identification of all other committed and prospective funding sources and the amount of funding from each source.¶

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**43-03-04-02. Application deadline.** Applications for the first review and award process in each fiscal year must be postmarked on or before October first, and applications for the second review and award process in each fiscal year must be postmarked on or before April first. In addition to these two grant rounds, the commission may establish additional grant rounds and set application deadlines for those rounds. The applicant may amend its application at any time before the application deadline. After the application deadline, the applicant may amend its application only upon the approval of the commission.

**History:** Effective February 1, 1988; amended effective October 1, 1990; March 1, 1992.

**General Authority:** NDCC 57-61-01.5

**Law Implemented:** NDCC 54-17.5-04, 57-61-01.5

**43-03-04-03. Application fee.** All applications must be accompanied by a one hundred dollar nonrefundable application fee. Checks or money orders should be made payable to the "State of North Dakota".

**History:** Effective February 1, 1988.

**General Authority:** NDCC 57-61-01.5

**Law Implemented:** NDCC 54-17.5-04, 57-61-01.5

**43-03-04-04. Outstanding tax liability.** Superseded by subsection 15 of section 43-03-04-01, effective March 1, 1992.

## **CHAPTER 43-03-05 REVIEW AND AWARD PROCESS**

### **Section**

**43-03-05-01** Application Evaluation – Criteria

**43-03-05-02** Application Review – Initial Review

**43-03-05-02.1** Application Review – Technical Review Committee

**43-03-05-02.2** Application Review – Council Recommendation and Commission Decision

**43-03-05-03** Contracts

**43-03-05-04** Disbursement of Funds

**43-03-05-04.1** Project Duration

**43-03-05-05** Allocations

**43-03-05-06 Partially Funded or Delayed Projects**

**43-03-05-07 Contract Modifications**

**43-03-05-08 Reporting Requirements**

**43-03-05-01. Application evaluation – Criteria.** All applications will be evaluated according to the criteria set forth in North Dakota Century Code chapter 54-17.5, and the criteria established by the commission as stated in this section.

1. General criteria. Priority areas of the program include, but are not limited to marketing applications of lignite and lignite products; reclamation applications that will reduce unnecessary regulatory costs; demonstration or development activities for lignite projects and activities and for lignite products that have a high probability of commercialization; and base-line research that promotes additional lignite production or lignite products for the economic growth of North Dakota. The project must be applicable to research, development, or marketing of lignite or products derived from lignite or land reclamation research. The projects need not be unique to North Dakota's lignite resources but must be applicable to them. It is preferred that the project focus on the development and use of lignite rather than basic research.

2. Specific criteria.

a. Projects should conform to the following criteria:

- (1) Preserve or enhance existing jobs and create the opportunity for additional jobs.
- (2) Preserve or enhance existing lignite production.
- (3) Provide the opportunity for development and demonstration of marketable lignite products and technologies.
- (4) Provide for economic growth and benefit in coal-producing counties or those counties with recoverable coal reserves.
- (5) Provide a high probability for near term commercialization of the process, activity, or technology in North Dakota.
- (6) Provide for specific marketing strategies and contributions to the effective marketing of lignite, its products, or lignite-based technologies.
- (7) Provide opportunity for reclamation research projects that will reduce unnecessary regulatory costs and assist in effectively reclaiming surface mine land to its original or better productivity as soon as possible.

b. The merits of the project will be weighed in relation to:

- (1) The potential value of the project's success including market potential, social value, environmental value, technical feasibility, competition in the marketplace, and timing of completion;

(2) The feasibility of the cost-benefit ratio of the project;

(3) The risk involved in funding the project; and

(4) The economic condition of the applicant.

c. The project's compatibility with the objectives of the program will be considered, in particular, the following will be evaluated:

(1) The need for the project;

(2) The potential use by the lignite-related industry of the results to be achieved by the project;

(3) The timeliness of the project with regards to deadlines established by legislation;

(4) The impact on the lignite-related industry;

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- (5) The level of funding requested;
- (6) The level of matching funds;
- (7) The short-term and long-term benefits to the applicant, lignite industry, lignite producers, and the counties and state of North Dakota;
- (8) The likelihood that the project will achieve its technical and market goals;
- (9) The scientific soundness and innovation of any proposed technology;
- (10) The financial feasibility of the proposed project; and
- (11) The technical qualifications and expertise of the applicant, the investigators, and the sponsors.

**History:** Effective February 1, 1988; amended effective October 1, 1990; March 1, 1992.

**General Authority:** NDCC 57-61-01.5

**Law Implemented:** NDCC 54-17.5-01, 54-17.5-03, 57-61-01.5

**43-03-05-02. Application review – Initial review.** Upon receipt of an application, the commission will determine if the application meets eligibility requirements and is complete. The commission shall complete this review within thirty days of the application deadline date, though the commission may extend this time if needed to properly review an application. If the commission determines that the application meets eligibility requirements and is complete, the application will be referred to a technical review committee. The commission may also refer any question it has about completeness and eligibility to the technical review committee and such question may then be a consideration throughout the review process.

**History:** Effective February 1, 1988; amended effective March 1, 1992.

**General Authority:** NDCC 57-61-01.5

**Law Implemented:** NDCC 54-17.5-03, 54-17.5-04, 57-61-01.5

**43-03-05-02.1. Application review – Technical review committee.**

1. Composition. Members of a technical review committee are selected by the commission. Committee members should possess the expertise and experience necessary to adequately review the application.
2. Conflict of interest. No individual with a direct financial interest in a proposed project may be involved in any way in reviewing the application. If asked to review the application, the individual with the conflict of interest shall immediately inform the commission of the conflict. Failure to so notify the commission disqualifies the individual from serving on any technical review committee unless reinstated by the commission, and the commission may disqualify the application from being approved during the round of grants within which the conflict occurred.
3. Review. The technical review committee shall assess the technical and fiscal merits of the application. Upon completion of its review, the committee shall make its recommendation to the council. The committee shall submit its recommendation within thirty days, though the commission may extend this time if the committee needs more time to properly review the application.
4. Notification to applicant. The commission shall promptly notify the applicant of the recommendation made by the committee to the council.

**History:** Effective March 1, 1992.

**General Authority:** NDCC 57-61-01.5

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**Law Implemented:** NDCC 54-17.5-03, 54-17.5-04, 57-61-01.5

**43-03-05-02.2. Application review – Council recommendation and commission decision.**

The council shall consider, but is not bound by, a recommendation of the technical review committee. The council shall make a recommendation on each application to the commission. The council shall make its recommendation to the commission within thirty days of the council's meeting in which it arrived at its recommendation, though the commission may extend this time if the council needs to more properly review the application. The commission shall consider, but is not bound by, a recommendation of the council. Though the commission makes the decision to approve or reject all applications, the commission may only approve those applications that have received a favorable council recommendation.

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**History:** Effective March 1, 1992.

**General Authority:** NDCC 57-61-01.5

**Law Implemented:** NDCC 54-17.5-02, 54-17.5-03, 54-17.5-04, 57-61-01.5

**43-03-05-03. Contracts.** A grantee must enter into a contract with the commission and submit any supporting documentation required by the commission. The application will form an integral part of the contract. The commission shall provide a proposed contract to grantees within sixty days of commission approval of the project. The grantee will then have sixty days to execute a contract. If a contract is not executed by the grantee within the sixty days, the award will be canceled unless an extension of time is granted by the commission. The commission may include contract provisions that require payback of a portion of the award. Work carried out under a contract is the work of the grantee and not the commission.

**History:** Effective February 1, 1988; amended effective October 1, 1990; March 1, 1992.

**General Authority:** NDCC 57-61-01.5

**Law Implemented:** NDCC 54-17.5-04, 57-61-01.5

**43-03-05-04. Disbursements of funds.** Funds will be disbursed only after a contract has been executed. All disbursements will be made according to the schedule in the contract. Disbursements may be withheld if the commission deems the grantee has not complied with these rules or the contract.

**History:** Effective February 1, 1988; amended effective March 1, 1992.

**General Authority:** NDCC 57-61-01.5

**Law Implemented:** NDCC 54-17.5-04, 57-61-01.5

**43-03-05-04.1. Project duration.** The project must be completed within the time specified in the contract. If the project cannot be completed within the time specified in the contract, the grantee may make a written request to the commission for an extension of up to one year. The request must set forth the specific additional time requested and the reasons why an extension is needed. Upon receipt of the request, the commission shall convey it to its technical advisor. The commission's technical advisor shall review the request and make a recommendation to the commission. The commission, after reviewing the recommendation, shall decide whether or not to grant the request.

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Additional extensions may be sought under the same procedure described above, but may only be granted if the grantee proves that factors beyond the grantee's control are the cause of its inability to complete the project on time and that since receiving the first extension the grantee has been diligent in all respects in trying to complete the project on time. Lignite vision 21 program contracts with the commission shall be for a period not to exceed five years, unless otherwise negotiated. If at the end of five years, the lignite vision 21 program contractor wishes to continue the project, the contractor must reapply to the council (meaning a new application, council review and commission approval) for further funding support.

**History:** Effective March 1, 1992.

**General Authority:** NDCC 57-61-01.5

**Law Implemented:** NDCC 54-17.5-04, 57-61-01.5

**43-03-05-05. Allocations.** If the work under a contract extends beyond the state's fiscal biennium in which the contract is made, any further disbursements of the grant by the commission to the grantee cannot be guaranteed and will be made only if sufficient funds are appropriated in the new biennium to satisfy the contract.

**History:** Effective February 1, 1988; amended effective March 1, 1992.

**General Authority:** NDCC 57-61-01.5

**Law Implemented:** NDCC 54-17.5-04, 57-61-01.5

**43-03-05-06. Partially funded or delayed projects.** If the commission grant is less than the amount requested, the applicant may decline the award or proceed with the project as proposed, notwithstanding the reduced award. Failure of a grantee to proceed with the project in a timely manner or comply with contract terms or these rules entitles the commission to cancel the grant and contract and to receive from the grantee full reimbursement of all funds the commission disbursed under the contract.

**History:** Effective October 1, 1990; amended effective March 1, 1992.

**General Authority:** NDCC 57-61.01.5

**Law Implemented:** NDCC 54-17.5-04, 57-61-01.5

**43-03-05-07. Contract modifications.** If at any time after entering a contract the grantee desires to change any term of the contract, the grantee shall make a written request to the commission. The request must set forth the specific change desired and the reasons why the change is needed. Upon receipt of the request, the commission, in consultation with the technical advisor, shall review the request. The commission may request a recommendation from the executive committee or the council. If the request is substantive, the executive committee and council may use technical reviewers to analyze the request. After completion of their review and consideration of any recommendation that may be provided by the council or the executive committee, the commission shall decide whether or not to grant the request.

**History:** Effective March 1, 1992.

**General Authority:** NDCC 57-61-01.5

**Law Implemented:** NDCC 54-17.5-04, 57-61-01.5

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**43-03-05-08. Reporting requirements.** A grantee has the following reporting obligations:

1. Interim reports. A grantee shall submit to the commission reports summarizing the project's accomplishments and expenditures to date. The timing of the reports will be specified in the contract.
2. Special reports. If substantial progress on a project occurs earlier than anticipated, the grantee shall immediately submit to the commission a report explaining the accomplishment.
3. Final report. A comprehensive final report must be submitted to the commission by all grantees within the time specified in the contract. This report must include a single page project summary describing the purpose of the project, the work accomplished, the project's results, and the potential applications of the project. The rest of the report must explain these subjects in detail as well as the total costs of the project, a summary fiscal accounting of the entire project, any plans for developing or putting to commercial use the results of the project, and whether and in what manner the project met or failed to meet the standards referred to in subsection 7 of section 43-03-04-01.

**History:** Effective March 1, 1992.

**General Authority:** NDCC 57-61-01.5

**Law Implemented:** NDCC 54-17.5-04, 57-61-01.5

## **CHAPER 43-03-06**

### **PUBLIC INFORMATION – PATENT AND NEW TECHNOLOGIES POLICIES**

#### **Section**

**43-03-06-01** Application Ownership

**43-03-06-02** Rights to Technical Data

**43-03-06-03** Use for Governmental Purposes

**43-03-06-04** Patent Rights – Manufacturing in North Dakota

**43-03-06-01. Application ownership.** Information contained in unsuccessful applications will remain the property of the applicant, but the commission will retain file copies of all applications, findings, and reports. Except with regard to confidential information, applications are public information and are available to the public upon request and payment of copying charges.

**History:** Effective February 1, 1988; amended effective March 1, 1992.

**General Authority:** NDCC 57-61-01.5

**Law Implemented:** NDCC 54-17.5-04, 54-17.5-06, 57-61-01.5

**43-03-06-02. Rights to technical data.** Rights to technical data, including software developed under the terms of a grant, shall remain with the grantee.

**History:** Effective February 1, 1988; amended effective October 1, 1990; March 1, 1992.

**General Authority:** NDCC 57-61-01.5

**Law Implemented:** NDCC 54-17.5-04, 57-61-01.5

**43-03-06-03. Use for governmental purposes.** The grantee may copyright and publish material developed with commission funding. The state of North Dakota and its consultants, independent contractors, and suppliers, to the extent such are providing services to the state, shall have an irrevocable royalty-free right to practice under any

patents, patent applications, or other new technology developed under the commission's programs. The intent of this section is to enable state agencies to purchase or use, or both, new technology products or processes for governmental purposes without having to pay the imputed development costs of the products or processes twice; first in the research and development state under commission funding and then later in the purchase of the processes or products. The state may not use this provision to enter into the private marketplace through direct manufacture or production of goods and services. The commission may waive the state's royalty-free right if any other governmental entity, state, federal, or foreign, provides matching funds and imposes conditions that do or may conflict with the right provided for by this section. A waiver may be given only if the following are met:

1. The grantee has requested from the other funding source a waiver of its requirements that conflict or may conflict with this section;
2. The other funding source provides at least twenty percent of the project's funding; and
3. It is unlikely the state would ever seek to use the right given the state under this section.

**History:** Effective February 1, 1988; amended effective March 1, 1992.

**General Authority:** NDCC 57-61-01.5

**Law Implemented:** NDCC 54-17.5-04, 57-61-01.5

**43-03-06-04. Patent rights – Manufacturing in North Dakota.** Applicants may retain the principal worldwide patent rights to any invention made with financial support under this program, except the patent holder agrees directly, or through licensing of patents, to assure that any manufacturing thereof shall substantially occur in North Dakota. Similarly, use of any new technology or other technical information derived in part from funding under this program requires that any manufacturing thereof shall substantially occur in North Dakota. For the purposes of this section, the words "substantial" or "substantially" shall mean not that the primary manufacturing must occur in North Dakota, but rather that more than incidental manufacturing must occur in North Dakota. The grantee or licensee or assignee, as determined by the commission, must reimburse the entire grant amount received through the commission should such licensees or assignees relocate or be established out of the state and not continue substantial manufacturing in North Dakota. The commission may choose not to enforce the "substantial manufacturing" requirement of this section if there is no person or entity in North Dakota capable of fulfilling the requirement and it is unlikely that in the near future a person or entity would be capable of satisfying the requirement.

**History:** Effective February 1, 1988; amended effective March 1, 1992.

**General Authority:** NDCC 57-61-01.5

**Law Implemented:** NDCC 54-17.5-04, 57-61-01.5